



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 16, 1998

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Eduardo A. Masferrer, Chairman
Maria F. Diaz, Senior Vice President
Hamilton Bank, N.A.
3750 N.W. 87th Avenue
Miami, FL 33178

RE: MUR 4806
Hamilton Bank, N.A.
Eduardo A. Masferrer
Maria F. Diaz

Dear Mr. Masferrer and Ms. Diaz:

On September 1, 1998, the Federal Election Commission found that there is reason to believe Hamilton Bank, N.A. and you violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Submit Written Answers must be submitted within 30 days of your receipt of this order. Any additional materials or statements you wish to submit should accompany the response to the order. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this order. If you intend to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be

Mr. Masferrer
Ms. Diaz
Hamilton Bank, N.A.
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pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation will not be entertained after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Tamara K. Kapper, the staff member assigned to this matter, at (202) 694-1650 or the toll-free number (800) 424-9530.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

Enclosures

1. Order
2. Factual and Legal Analysis
3. Procedures
4. Designation of Counsel Form

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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MUR 4806

ORDER TO SUBMIT WRITTEN ANSWERS

TO: Hamilton Bank, N.A.
3750 N.W. 87th Avenue
Miami, FL 33178

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within 30 days of receipt of this Order.

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WHEREFORE, the Chairman of the Federal Election Commission has hereunto set her
hand in Washington, D.C. on this 16th, day of September, 1998.

For the Commission,

Joan D. Aikens
Joan D. Aikens
Chairman

ATTEST:

Marjorie W. Emmons
Marjorie W. Emmons
Secretary to the Commission

Attachments

1. Instructions
2. Definitions
3. Questions

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INSTRUCTIONS

In answering these interrogatories, furnish all information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including information appearing in your records.

Each answer is to be given separately and independently, and, unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any communications or other items about which information is requested by any of the following interrogatories, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1996 to the present.

The following interrogatories are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

DEFINITIONS

For the purpose of this discovery request, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and request for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

BEFORE THE FEDERAL ELECTION COMMISSION

INTERROGATORIES

MUR: 4806
Hamilton Bank, N.A.

1. Please identify the current officers of Hamilton Bank, N.A. ("Bank") and the dates they took office.
2. Please identify all person(s) with authority to approve expenditures by the Bank in 1996.
3. On April 1, 1996 the Bank and/or its Chairman, Eduardo A. Masferrer, received a solicitation for a \$50,000 contribution to the Democratic National Committee ("DNC") for the purchase of an annual trustee membership from Howard M. Glicker, Director of the National Finance Board. On April 26, 1996, the Bank made a contribution by means of a check in the amount of \$50,000 to the DNC for the purchase of an annual trustee membership on behalf of Mr. Masferrer. Please identify all person(s) who requested and/or authorized this expenditure by the Bank, and explain each person's role in the transaction.
4. Please identify the department within the Bank that processes requests for contributions to charitable or other organizations. Please identify the person(s) in 1996 were responsible for determining whether a contribution would be made by the Bank and who ensured that the contribution was made properly to the correct organization.
5. Please identify all person(s) who solicited the Bank for the contribution to the DNC, explain the method by which the Bank was solicited, and give the date(s) on which the solicitation(s) were received verbally and/or in writing.
6. Please state the method by which the \$50,000 Bank check cited in Interrogatory 3, was transmitted to the DNC, e.g., regular mail, hand-delivered. If the contribution was hand-delivered to the DNC or to a representative of the DNC, please identify the person who delivered the check for the Bank and the person who received the check for the DNC.
7. Has the Bank made any other contribution(s) from any of its accounts to the DNC since January 1, 1996. If so, please give the date(s) of the contribution(s) and the amount(s).

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Hamilton Bank, N.A.

MUR: 4806

Eduardo A. Masferrer, Chairman

Maria F. Diaz, Senior Vice President

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2). On September 18, 1997, the Commission received a referral from the Office of the Comptroller of the Currency, ("OCC"), regarding its discovery of a contribution made by Hamilton Bank, N.A. ("the Bank") to the Democratic National Committee ("DNC").

A. The Law

The Federal Election Campaign Act of 1971, as amended, ("the Act") prohibits a national bank from making any contribution or expenditure in connection with any election to any political office. 2 U.S.C. § 441b(a). Section 441b(a) also prohibits any officer or director of a national bank to consent to any contribution or expenditure by the national bank. *See also* 11 C.F.R. § 114.2(a). The Act defines a contribution as any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. § 431(8)(A)(i).

A donation made to a national party committee for a building fund is not considered a contribution or an expenditure, if it is specifically designated to defray any cost incurred for the construction or purchase of any office facility which is not acquired for the purpose of influencing the election of any candidate in any particular election for a

Federal office. 11 C.F.R. § 100.7(b)(12) and 11 C.F.R. § 114.1(a)(2)(ix). Thus, building fund donations are not considered contributions and are not subject to any limits or prohibitions of the Act. However, donations to building funds shall be reported as a memo entry on Schedule A of the committee's disclosure report. 11 C.F.R. § 104.3(g).

B. The Facts

In the spring of 1997, during their normal course of reviewing the Bank's records, OCC examiners discovered that on April 26, 1996 the Bank had made a \$50,000 contribution to the DNC. According to the DNC's disclosure reports on file with the Commission, the DNC deposited the contribution from the Bank into its non-federal corporate account on April 30, 1996. After the discovery of the prohibited contribution by OCC examiners, on June 16, 1997, the DNC sent the Bank a letter apologizing for "inadvertently" depositing the \$50,000 contribution into the non-federal corporate account, and stating that it would transfer the \$50,000 from that account to its Building Fund account immediately.

According to the referral material, the Bank's contribution to the DNC was the result of a solicitation letter dated April 1, 1996, from Howard Glicker, Director of the National Finance Board of the DNC. The letter was sent to Eduardo A. Masferrer, Chairman of Hamilton Bank N.A., at the Bank's address and conveyed to him the cost and benefits of becoming a trustee member of the DNC. The solicitation letter, which was written on DNC letterhead and signed by Mr. Glicker, details all the various privileges and advantages that trustee members receive upon contributing \$50,000, which include, among other things, dinner with the President and "preferential treatment for appointments to Boards and Commissions." The letter also references conversations

previously held between Mr. Masferrer and Mr. Charles Dusseau, the former Florida Secretary of Commerce, regarding the purchase of a trustee membership in the DNC.

After receiving solicitations from Mr. Glicken and Mr. Dusseau, it appears that Mr. Masferrer planned to use Bank funds for the contribution to the DNC, because a Bank purchase requisition form was prepared on April 18, 1996 for the purchase of a DNC trustee membership in the amount of \$50,000, and that he instructed the Bank's Deputy General Counsel, Armin G. Seifart, to determine whether the Bank could make a contribution to the DNC. Mr. Seifart appears to have then sought outside counsel and an instruction from the DNC's general counsel regarding the legality of the contribution. On April 24, 1996, Mr. Seifart received a letter from the DNC's General Counsel, Joseph E. Sandler, advising him that "...it is lawful for the Democratic National Committee to accept a contribution to its Building Fund account from a national bank." The letter went on to inform the Bank that checks to the Building Fund should be made payable to "DNC--Building Fund."

Maria F. Diaz, Senior Vice President for Finance for the Bank, has stated in her response to OCC inquiries that she personally spoke to the DNC's general counsel and other DNC representatives, and was told that the only permissible contribution the Bank could make to the DNC was to its Building Fund.

On April 26, 1996, the Bank issued a check to the DNC in the amount of \$50,000 and designated it for the purchase of an annual trustee membership, *not for the Building Fund*. The Bank's purchase requisition form that authorized the making of the contribution also stated that the purpose of the disbursement was the purchase of an

annual trustee membership. This internal document was signed by both Mr. Masferrer and Ms. Diaz and was dated April 26, 1996.

Several months later, on November 15, 1996, the DNC sent Mr. Masferrer a letter thanking him for his "generous support" and informing him that his support helped them to "carry out such key campaign components such as polling, media and get out the vote operations." There is no evidence in hand that the Bank responded to this letter, asking that the donation go into the Building Fund.

C. The Analysis

The Hamilton Bank, N.A. is a national bank and is prohibited from making contributions or expenditures in connection with any election to any political office. 2 U.S.C. § 441b(a). As stated above, the only exception to this prohibition is that a national bank may make a donation to a national party committee for its building fund as long as the office facility is not acquired for the purpose of influencing the election of any federal candidate. 11 C.F.R. §§ 100.7(b)(12) and 114.1(a)(2)(ix). Pursuant to 2 U.S.C. § 441b(a) it is also unlawful for any officer or director of any national bank to consent to any contribution or expenditure by the national bank to any political campaign committee.

Mr. Masferrer and Ms. Diaz, Chairman and Senior Vice President of the Bank, respectively, were informed by two (2) different sources, their outside counsel and the DNC, that the Bank was prohibited from making a contribution to the DNC but could make a donation to the DNC's Building Fund. It is also clear that Mr. Masferrer and Ms. Diaz were advised by the DNC to designate the contribution to the Building Fund; however, this advice was not followed. Ms. Diaz's explanation for this error is that "the

documentation (our purchase order) prepared in house was not updated to reflect this research and unfortunately the check is not clear on the 'Building Fund' designation."

Although Ms. Diaz argues that the Bank intended the contribution to be used for the Building Fund, her argument is not persuasive for four (4) reasons. First, the solicitation letter that Mr. Masferrer received from Mr. Glicken fails to mention the DNC's Building Fund, but, rather, specifically discusses the advantages of becoming a trustee member of the DNC. Second, the designation on the Bank check was very clear, as was the supporting documentation; the \$50,000 in Bank funds was specifically designated for the purchase of an annual trustee membership for its chairman, Mr. Masferrer, not for the Building Fund. Third, Mr. Masferrer began receiving invitations to White House receptions and according to DNC records, he also became a Trustee and major supporter. And fourth, after Mr. Masferrer received a thank you letter from the DNC on November 15, 1996, no action was taken by the Bank to rectify any error reflected in the letter.

The evidence indicates that Mr. Masferrer and Ms. Diaz knowingly and willfully violated 2 U.S.C. § 441b(a) because Mr. Masferrer apparently sought the benefits that the \$50,000 trustee membership to the DNC would buy him and was not interested in making a donation to the DNC's Building Fund because such a donation would not yield him the same benefits. It is clear from the supporting documentation that Mr. Masferrer and Ms. Diaz disregarded the law concerning the illegality of using Bank funds for the purpose of making a contribution to the DNC, and proceeded (against the DNC's and their own counsels' advice) to purchase a trustee membership for Mr. Masferrer.

In summary, Mr. Masferrer and Ms. Diaz, officers of the Hamilton Bank, N.A., were explicitly told by two different sources of legal counsel that the Bank was prohibited from making a contribution to any political committee including the DNC. Therefore, there is reason to believe that Hamilton Bank, N.A., Eduardo A. Masferrer, Chairman, and Maria F. Diaz, Senior Vice President of Finance, violated 2 U.S.C. § 441b(a).

2025 RELEASE UNDER E.O. 14176